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COMMONWEALTH OF VIRGINIA, ex rel.

**OLIVER D. RUDY, TRUSTEE OF
THE FINE CREEK LAND TRUST**

and

CASE NO. PUE010473

**THE REED'S LANDING CORPORATION,
Petitioners**

v.

**SOUTHSIDE ELECTRIC COOPERATIVE,
Defendant.**

**To seek sanctions for alleged abuse of authority
granted under § 56-49 of the Code of Virginia**

HEARING EXAMINER'S RULING

November 30, 2001

On October 30, 2001, Southside Electric Cooperative (the "Cooperative"), by counsel, filed a Motion for Summary Judgment and Dismissal. The Cooperative argues that the Petition should be found to be completely devoid of any legal basis or good faith argument, that the Petition should be found to be completely devoid of any factual allegations upon which a specific remedy could be granted, and that the Petition should be dismissed.

By Hearing Examiner's Ruling entered on November 6, 2001, Oliver D. Rudy, Trustee of the Fine Creek Land Trust and The Reed's Landing Corporation (collectively "the Petitioners") were provided an opportunity to file a response to the Cooperative's Motion for Summary Judgment and Dismissal.

On November 19, 2001, the Petitioners filed a Response to Motion for Summary Judgment and Dismissal. In their Response, the Petitioners denied the allegations of the Cooperative's Motion. The Petitioners argued their Petition contained specific allegations of misconduct which, if proven before the Commission, provide the jurisdictional basis for the Commission to enter an order pursuant to § 56-6 of the Code of Virginia, which grants the Commission jurisdiction to: (1) enjoin a public service corporation from a particular course of conduct; (2) enjoin obedience to the requirements of Title 56 of the Code of Virginia; and (3) compel any public service corporation to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth. The Petitioners further argued the expressed and implied good faith negotiations with property owners in the Commonwealth as a prerequisite to the exercise of the power of eminent domain is a duty imposed on the

Cooperative under the provisions of § 56-49 of the Code of Virginia. The Petitioners further argue an abuse of this power would be such a violation of a public duty it would warrant the application of the Commission's injunctive powers.

A motion for summary judgment is the appropriate pleading to test the legal sufficiency of a petition. A court may not grant a motion for summary judgment if there is any dispute of material fact. *Slone v. General Motors Corp.*, 249 Va. 520, 522 (1995). The Petitioners are alleging the Cooperative, a public service corporation, used a false or misleading real estate plat to induce the Petitioners to grant a utility easement over more land than the Petitioners originally intended. If the allegations are proven to be true, this is the very type of conduct the General Assembly sought to address in § 56-6 of the Code of Virginia. The material question of fact to be decided by the Commission is whether the real estate plat was, in fact, false or misleading. Since there is a material question of fact in dispute, summary judgment cannot be granted. Accordingly,

IT IS DIRECTED:

- (1) That the Cooperative's Motion for Summary Judgment and Dismissal is hereby, denied;
- (2) That, on or before December 10, 2001, the Petitioners shall file with Joel H. Peck, Clerk of the Commission, c/o Document Control Center, State Corporation Commission, P.O. Box 2118, Richmond, VA 23218, an original and fifteen (15) copies of their prefiled testimony and exhibits and shall also serve a copy upon counsel for the Cooperative;
- (3) That, on or before December 21, 2001, the Cooperative shall file with the Commission an original and fifteen (15) copies of its prefiled testimony and exhibits and shall also serve a copy upon counsel for the Cooperative;
- (4) That, or before January 4, 2002, the Petitioners shall file with the Commission an original and fifteen copies of any rebuttal testimony and shall also serve a copy upon counsel for the Cooperative;
- (5) That the requirement for the parties to file a joint stipulation of facts shall be dispensed with; and
- (6) That the hearing scheduled to commence at 10:00 a.m. on January 8, 2002, shall remain as docketed.

Michael D. Thomas
Hearing Examiner